

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

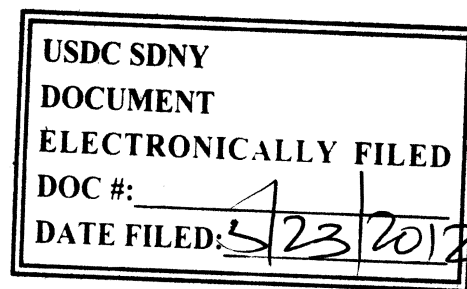
-----X  
FELICIA FITZGERALD-DIXON,

Plaintiff,

-v-

STAPLES and RICK DEL ROSARIO,

Defendants.  
-----X



11 Civ. 7344 (JMF)

ORDER

JESSE M. FURMAN, District Judge:

Plaintiff's complaint was filed on October 17, 2011, alleging employment discrimination on the basis of race and gender in violation of Title VII of the Civil Rights Act of 1964, the New York State Human Rights Law, and the New York City Human Rights Law. The Complaint was never served on the Defendants. On December 13, 2011, this action was referred to Magistrate Judge Andrew J. Peck for a Report and Recommendation. In a Report and Recommendation filed on April 16, 2012, Magistrate Judge Peck recommended that the Court dismiss Plaintiff's complaint without prejudice for failure to timely serve it pursuant to Fed. R. Civ. P. 4(m).

The Report and Recommendation advised the parties that they had 14 days from service of the Report and Recommendation to file any objections, and warned that failure to timely file such objections would result in waiver of any right to object. As of the date of this Order, no objections have been filed and no request for an extension of time to object has been made. The Report and Recommendation expressly called Petitioner's attention to Rule 72 of the Federal Rules of Civil Procedure and Title 28, United States Code, Section 636(b)(1). Petitioner received clear notice of the consequences of the failure to object and has waived the right to object to the Report and Recommendation or to obtain appellate review. *See Frank v. Johnson*,

968 F.2d 298, 300 (2d Cir. 1992); *see also Caidor v. Onondaga Cnty.*, 517 F.3d 601 (2d Cir. 2008).


Despite the waiver, the Court has reviewed the Report and Recommendation, unguided by objections, and finds it to be well reasoned and grounded in fact and law. There is no reason why, in the interests of justice, the waiver of the right to object should not be enforced. Among other things, on April 24, 2012, this Court issued an Order, directing Plaintiff to communicate with the Court, in writing, by May 25, 2012, showing good cause why Plaintiff failed to serve the summons and Complaint within the 120 days prescribed by Rule 4(m) of the Federal Rules of Civil Procedure. The Order further advised Plaintiff that if the Court did not receive this communication “showing good cause why such service was not made within the 120 days, the Court will dismiss the case.” By letter dated May 16, 2012, Plaintiff advised the Court that she would not be prosecuting this action.

Accordingly, the Report and Recommendation is adopted in its entirety and it is ORDERED that the case is dismissed for failure to prosecute.

This Court certifies pursuant to Title 28, United States Code, Section 1915(a)(3) that any appeal from this Order would not be taken in good faith, and *in forma pauperis* status is thus denied. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: May 23, 2012  
New York, New York

  
JESSE M. FURMAN  
United States District Judge